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would require actual ill will toward the person injured. *Matter of Ennis & Stoppani, supra.* The actual decision in the principal case, however, seems desirable; and the liberal construction of 17 *a* (2) may perhaps be justified as being necessary to counteract the results of too strict a construction of 17 *a* (4).

BANKRUPTCY — PREFERENCES — JUDGMENT, LEVY AND SALE WITHIN FOUR MONTHS OF BANKRUPTCY. — A creditor with reasonable cause to believe the debtor insolvent procured a judgment against him, levied execution and received the proceeds of the execution sale, all the steps occurring within four months of the filing of the petition in bankruptcy. The trustee in bankruptcy sued the creditor for the amount realized from the sale. *Held*, that the trustee may recover. *Anderson* v. *Stayton State Bank*, 38 Am. B. Rep. 4.

For a discussion of the principles involved, see NOTES, p. 619.

BANKRUPTCY — PREFERENCE — RETURN BY BROKER TO CUSTOMER OF STOCK REDEEMED FROM A PLEDGEE. — A customer loaned stock to his broker with authority to pledge. The broker did pledge for his own purposes and within four months of bankruptcy and while insolvent used his own funds to redeem the stock and returned it to the customer. The trustee in bankruptcy of the broker claimed that the transaction was preferential. *Held*, that no preference was effected. *Robinson* v. *Roe*, 233 Fed. 936 (C. C. A., 2nd Circ.).

The court bases its decision on the ground that the customer was merely reacquiring property to which he always had an exclusive property right. If this were the fact, of course he received no preference; but by authorizing the broker to pledge, his interest became encumbered to the extent of the pledgee's claim. Now if the customer was a creditor when the stock was redeemed and returned to him, he has received a preference. BANKRUPTCY ACT, § 60 *a*. A creditor is defined as one owning a claim provable in bankruptcy. BANKRUPTCY ACT, § 1, sub-sec. 9. Although tort claims are not ordinarily provable, the victim of a conversion of personal property may waive the tort and prove on the theory of implied contract. *Crawford* v. *Burke*, 195 U. S. 176. Hence, if the broker had been guilty of a conversion of the stock, the customer would have had a provable claim and satisfaction thereof by a redemption, and return of the converted stock would be preferential. But there has been no conversion in the principal case inasmuch as there was no unqualified demand for a return. However, even if there was no present obligation to redeem and return the stock, there was at least a contingent claim on the part of the customer, contractual in its nature, and becoming absolute on the customer's election to require his property. If this claim is provable, its satisfaction is preferential. It has been decided that on the bankruptcy of the principal, a surety has a provable claim even before he has in any way discharged the debt. *Williams* v. *U. S. Fidelity and Guaranty Co.*, 236 U. S. 549. And quite recently the Supreme Court has held that a party to a bilateral contract, still largely executory, may prove for the value of the entire contract against the estate of the other contracting party. *Central Trust Co.* v. *Chicago Auditorium Ass'n*, 240 U. S. 581. But see *In Re Imperial Brewing Co.*, 143 Fed. 579. Hence it is submitted that the necessary elements of a preference are present in the case under discussion. Furthermore it seems immaterial whether the customer loans property to the broker to be pledged, as here, or whether the original transaction was a pledge with power to repledge. It has been decided by the Supreme Court that a pledgor who takes back stock under circumstances identical with those of the principal case does not receive a preference. *Richardson* v. *Shaw*, 209 U. S. 365. The same reasons rendering the case under discussion open to criticism apply likewise to such a case.

BANKRUPTCY — PROPERTY PASSING TO THE TRUSTEE — LIFE INSURANCE POLICIES: IN GENERAL. — One Samuels had insured his life in favor of a third person, reserving power to change the beneficiary. The policy had a cash sur-

render value. After the bankruptcy of the insured, his trustee sought to recover the policy or its value. *Held*, that he may not recover either. *Matter of Samuels*, 237 Fed. 796 (Circ. Ct. of App., 2nd Circ.).

Section 70 *a* (5) of the Bankruptcy Act gives to the trustee the property which the bankrupt could have transferred, provided that when the bankrupt has an insurance policy with a surrender value "payable to himself," he may retain the policy, if he pays the surrender value to the trustee, and otherwise the policy passes to the trustee. The construction of this clause might have been that all policies payable to the bankrupt or in which he had the right to change beneficiaries should be considered property which he might have transferred, and that the policies should therefore pass to the trustee, unless they were such as were redeemable and redeemed under the proviso. *In re* Orear, 178 Fed. 632; *In re* Dolan, 182 Fed. 949. See 1 REMINGTON, BANKRUPTCY, 2 ed., §§ 1002, 1009. But as to policies payable to the bankrupt, the Supreme Court has held that they remain the property of the bankrupt and that only the surrender values of those policies which have surrender values pass to the trustee. *Burlington* v. *Crouse*, 228 U. S. 459. The basis of this decision seems to be that no interest in an insurance policy is intended to pass under § 70 *a* (5) unless it comes within the proviso. It might seem to follow that a policy payable to a third person in which the bankrupt could change the beneficiaries is not "payable to the bankrupt" and that consequently its surrender value would not pass under § 70 *a* (5). See 1 REMINGTON, BANKRUPTCY, 2 ed., § 1009. But this would seem to be unduly narrowing an already narrow construction; for, since the bankrupt could make himself beneficiary, the policy is in substance payable to the bankrupt. He should, therefore, get the surrender value under § 70 *a* (5). The same result, it would seem, might be reached under § 70 *a* (3). This gives to the trustee powers which the bankrupt might have exercised for his own benefit. And the right to change beneficiaries certainly seems to be such a power. Possibly, however, it may be held that no interest in an insurance policy can pass under *any* part of the Act except the proviso of § 70 *a* (5). *Cf.* *Burlington* v. *Crouse*, 228 U. S. 459, 472. But the Act seems to give little support to such a construction.

CARRIERS — LIMITATION OF LIABILITY — LIMITATION OF LIABILITY BY AGREED VALUATION. — The defendant, a common carrier, accepted a shipment of goods from the plaintiff of the value of two thousand dollars. The goods being lost, the shipper brings suit alleging that the goods were converted by the servants of the carrier to their own use. The defendant set up the affirmative defense that the contract of shipment valued the goods at fifty dollars and limited the liability of the carrier to that amount. The plaintiff demurred. *Held*, that the contractual limitation is binding and the demurrer should be overruled. *D'Utassy* v. *Barrett*, 56 N. Y. L. J. 1367 (N. Y. Ct. of App.).

In England a common carrier may, by contract, completely exempt itself from liability for loss of goods. *Nicholson* v. *Willan*, 5 East 507. Feeling the danger that the carrier might overreach the shipper, Parliament has provided that the contract must be just and reasonable. *Manchester, etc. Ry.* v. *Brown*, 8 App. Cas. 703. The American courts have, with a single exception, declared that contracts totally exempting carriers from liability for their own negligence are void as against public policy. *Railroad Co.* v. *Lockwood*, 17 Wall. (U. S.) 357; *School District* v. *Boston, etc. Ry. Co.*, 102 Mass. 552; *contra*, *Nelson* v. *Hudson River R. Co.*, 48 N. Y. 498. As to the possibility of contracting for a limited liability in return for a reduction in rates, American courts are divided. To some courts it seems impossible to limit a liability which, on grounds of policy, cannot completely be avoided. *U. S. Express Co.* v. *Backman*, 28 Ohio St. 144; *Black* v. *Goodrich Transportation Co.*, 55 Wis. 319; *Moulton* v. *St. Paul, etc. Ry. Co.*, 31 Minn. 85. To other courts the business sense of allowing a